HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G.V. SEETHAPAHTY

W.A. No.834 of 2006

Between:

L. Hassan Khan and others.

… Appellants.

and

Government of Andhra Pradesh,
represented by its Principal Secretary
Revenue Department, Secretariat,
Hyderabad and others.

…
Respondents.

:JUDGMENT:

Counsel for the appellant : Sri E. Ayyapu Reddy.

Counsel for the respondents : Government Pleader for Assignment.

11th August, 2006

Per G.S. Singhvi, CJ

Feeling aggrieved by order dated 12.4.2006 passed by the learned Single Judge in Writ Petition No.18630 of 2005 whereby he declined to entertain the appellants' challenge to order dated 14.8.2005 passed by Mandal Revenue Officer, Dhone, Kurnool District and relegated them to the remedy of appeal, the appellants have preferred this appeal under Clause 15 of the Letters Patent.

Late Mahboob Khan is said to have purchased land comprised in Survey No.480 in Dhone Village of Dhone Mandal, Kurnool District from Mahboob Bi under registered sale deed dated 15.8.1919. Appellants No.1 and 2 are sons of late Mahboob Khan and appellant No.3 is a transferee of the land from Abdur Rahman Khan. After the death of Mahboob Khan, appellant Nos.1 and 2 and third son of late Mahboob Khan namely, Noor Khan are said to have partitioned the property vide registered partition deed dated 9.7.1958. After coming into force of the Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971, all the sons of late Mahboob Khan appear to have obtained pattadar passbooks and title deeds. In September,1990, the State Government acquired portions of the land belonging to Hassan Khan, Abdur Rahman Khan and Noor Khan by initiating proceedings under the Land Acquisition Act, 1894. Subsequently, Abdur Rahman Khan transferred his remaining share in the land in favour of appellant No.3, Saleema Begum, wife of Mahamad Habibulla.

The appellants filed Writ Petition No.18630 of 2005 alleging therein that District Collector and Revenue Divisional Officer, Kurnool are trying to dispossess them under the influence of local Member of

Legislative Assembly, who wanted the land in Survey Nos.479 and 480 to be allotted to Gayatri Juice Industries, Dhone. In furtherance of this objective, Mandal Revenue Officer, Dhone issued notices dated 26.2.2005 and 9.6.2005. Thereafter, he passed order dated 14.8.2005 for resumption of the land in favour of the government with the avowed object of making the same available for house sites for poor persons.

In the counter affidavit filed on behalf of the non-petitioners, it was pleaded that the land in question was government land and the transfer made in favour of late Mahboob Khan by Mahboob Bi should be liable to be treated nullity because she did not have any right to sell the government land.

The learned Single Judge referred to order dated 12.8.2005 passed by another learned Single Judge in Writ Petition No.17968 of 2005 and his own order dated 28.12.2005 passed in Writ Petition No.27809 of 2005 and disposed of the writ petition by relegating the appellants to the remedy of appeal. This is evident from the following extracts of the order under challenge:

> "W.P.No.18630 of 2005 is filed against the proceedings dated 14.8.2005, which was issued by the MRO after considering the explanation of the petitioners therein. The other two writ petitions were filed after receiving the notice dated 9.6.2005, apprehending dispossession. A perusal of the proceedings dated 14.8.2005 would however reveal the said order covers all the writ petitions. Therefore, these writ petitions can also be disposed of in the above terms. Here, an important submission made by Sri E.Ayyapu Reddy, learned counsel for the petitioners in W.P.No.18630 of 2005 needs to be considered. Learned counsel submits that when the land is in possession of the petitioners for a long time over a period of more than nine decades, the summary proceedings under the LE Act cannot be taken by revenue officials for eviction of the petitioners. It is no doubt true that originally the land in Survey No.480 belonged to Mahaboob Bi, which was purchased by Mahaboob Khan under sale deed dated 15.8.1919. The land since then has been allegedly in possession of the petitioners, who obtained pattadar passbooks under the Act. In all these matters, a portion of the

land was acquired for National Highway and the compensation was paid either to the petitioners or to their predecessors in title. All these allegations, if true, are certainly the acts of possession and method of exercising the right over the land. Even when the action is initiated under LE Act, the respondents are bound to consider this aspect of the matter. Be it also noted that under Article 112 of the Limitation Act, 1963, the limitation for the Government to file a suit for declaration is 30 years. If the Government files a suit under Limitation Act, can they succeed now or whether such suit is barred by limitation. These are the primary issues, which cannot be ignored. Now that the final orders are already passed, it would not be proper for this Court to express any opinion on these questions.

In view of the above reasons, this Court is of considered opinion that the petitioners may file appeal before the RDO against the proceedings of the MRO dated 14.8.2005. As and when such appeals are filed, RDO shall consider the same and pass appropriate orders keeping in view the observations made herein above on legal questions. Till such exercise is completed, there shall be status quo as to possession."

Sri E. Ayyapu Reddy learned Advocate appearing for the appellants argued that the order under challenge should be set aside because the learned Single Judge did not go into the merits of the appellants' challenge to order dated 14.8.2005 passed by the Mandal Revenue Officer. Learned counsel emphasized that the Mandal Revenue Officer did not conduct any enquiry in consonance with the rules of natural justice and passed order-dated 14.8.2005 in a most arbitrary manner, and the learned Single Judge committed a serious error by refusing to entertain the appellants' challenge to order dated 14.8.2005. He further argued that the State Government cannot resort to summary procedure for eviction of the appellants who and whose predecessors are in possession of the land for the last more than nine decades. In support of his argument, Sri Reddy invited our attention to the judgment of the Supreme Court in **Government of Andhra Pradesh vs. T. Krishna Rao**[1]**.**

We have thoughtfully considered the submissions of the learned counsel for the appellants, but have not felt persuaded to agree with him because the learned Single Judge has done nothing except to follow the course adopted by him in an earlier matter and by another learned Single Judge in an identical matter. It is, therefore, not possible to castigate the order under challenge as having been passed without proper consideration of the issue raised in the writ petition.

We are further of the view that when remedy of appeal is available to the writ petitioners, this Court is fully justified in refusing to entertain their challenge to the order passed by the learned Single Judge, more so, because their interest has been amply safeguarded by directing that status quo shall be maintained till the decision of the appeals.

For the reasons stated above, the writ appeal is dismissed. However, we deem it proper to reiterate that if the appellants file appeal against order dated 14.8.2005 within a period of two weeks from today, the officer concerned shall deal with and decide the same within a period of next four months albeit after hearing all the affected parties including the representative of the department and examining records and evidence which may be produced by him. We also deem it proper to reiterate that the order passed by the learned Single Judge in relation to the possession of the land shall remain operative till the adjudication of appeal by the Revenue Divisional Officer.

G.S. SINGHVI, CJ

11th August, 2006 **G.V. SEETHAPATHY, J**

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[1] AIR 1982 SC 1081